



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1998

Mr. Albert Betts, Jr.
General Counsel
State Office of Risk Management
William P. Clements, Jr. Building
P. O. Box 13777
Austin, Texas 78711

OR98-2512

Dear Mr. Betts:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118996.

The State Office of Risk Management ("SORM") received a request for the following information:

1. Complete copies of all proposals with attachments;
2. Copies of all documents relating to the development of the IFB ("Invitation for Bid"), evaluation of proposals, site visits, evaluation of finalists and the decision to reject all bids and cancel the procurement. Copies of any documents reflecting communications between proposers and SORM representatives during the bid evaluation process; and,
3. Copies of all correspondence and documents concerning the contract with CorVel for medical cost containment services.

In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ You claim that "all information related to

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

items 1 and 2 of the request are confidential.”² Specifically, you claim that the requested information is excepted from disclosure under sections 552.104, 552.107, 552.110, and 552.111 of the Government Code. We have considered the arguments and exceptions you raise and reviewed the submitted information.³

Section 552.104 excepts from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” The purpose of this exception is to protect the purchasing interests of a governmental body, usually in competitive bidding situations prior to the awarding of a contract. Open Records Decision No. 593 at 2 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation. Open Records Decision No. 541 at 4 (1990).

You state that “SORM distributed an Invitation for Bid for Medical Cost Containment Service [sic]. After receiving and reviewing responses to the bid, SORM did not award a contract for the requested services.” You also state that “SORM informed all bidders that it was withdrawing the IFB and was in the process of reviewing and revising the IFB.” Therefore, you contend that the documents related to the bids and the IFB are excepted from disclosure under section 552.104, “as information related to competition or bidding.” Based on your representations, we conclude that you may withhold, at this time, the requested information from required public disclosure under section 552.104. However, once the bidding process is completed, you may not rely on section 552.104 to withhold this information. Open Records Decision No. 541 at 5 (1990).

We also note that, once the bidding process is completed and section 552.104 is no longer applicable, should there be a subsequent request for this same information, we advise SORM to seek a ruling from this office since the submitted information may implicate the property and privacy rights of a third party. *See* Gov’t Code §§ 552.110, 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released).

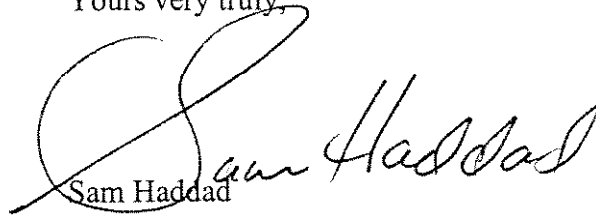
As we resolve your request under section 552.104, we need not specifically address your other claimed exceptions at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be

²As you have not raised an applicable exception for Item 3 of the request, we assume that the information responsive to this category of information will be released.

³In a clarification letter from the requestor to SORM, certain factual issues concerning the applicability of the claimed exceptions were raised by the requestor. We note that to the extent that the pending request for information raises questions of fact, this office is unable to resolve such questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). Disputed questions of fact are not resolvable in the open records process, and therefore, the attorney general must rely on the representations of the governmental body or third parties. *Id.*

relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/mjc

Ref.: ID# 118996

Enclosures: Submitted documents

cc: Mr. Robert Fortier
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(w/o enclosures)